IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

WP(C).No. 36075 of 2004(T)

PETITIONER:

E.USHANANDINI, W/O.K.SAJI KUMAR,
AGED 32 YEARS, LOWER PRIMARY SCHOOL ASSISTANT,
BRAHMANANDODAYAM JUNIOR BASIC SCHOOL,
KALADY, ERNAKULAM DISTRICT.

BY ADV. SRI.V.A.MUHAMMED,
SRI.K.E.HAMZA.

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY**
   ITS SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION DEPARTMENT,
   SECRETARIAT, TRIVANDRUM.

2. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   JAGATHY, TRIVANDRUM-14.

3. **THE HEADMASTER,**
   BRAHMANANDODAYAM JUNIOR BASIC SCHOOL,
   KALADY, ERNAKULAM DISTRICT.

BY GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.36075/2004:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. M (2)/804/2003/DPI OF THE R.2. DTD. 15/07/2003.

EXT.P.2: COPY OF THE G.O. (RT). NO. 5189/03/GE OF THE GOVERNMENT DTD. 17/12/2003.

EXT.P.3: COPY OF THE REPRESENTATION FILED BEFORE THE GOVERNMENT DTD. 01/03/2004.

EXT.P.4: COPY OF THE LETTER NO. 17195/L3/04/GE OF THE GOVERNMENT DTD. 20/09/2004.

EXT.P.4.A: COPY OF THE LETTER NO. 87185/EDN. C1/04/FIN. OF THE GOVERNMENT DTD. 11/10/2004.

EXT.P.5: COPY OF THE CIRCULAR NO. 38/2002/FIN. OF THE GOVERNMENT DTD. 03/06/2002.

EXT.P.6: COPY OF THE G.O. (RT). NO. 4154/03/G. EDN. OF THE GOVERNMENT DTD. 14/10/2003.

EXT.P.7: COPY OF THE G.O. (RT). NO. 1626/2002/G. EDN. OF THE GOVERNMENT DTD. 17/06/2002.

//TRUE COPY//

prv.

KURIAN JOSEPH, J.

W.P.(C) No.36075 of 2004

Dated 21st February, 2007.

J U D G M E N T

The issue raised in this writ petition pertains to counting of period of leave without allowance availed by the petitioner for the purpose of B.Ed. course. In **Deepika v. State of Kerala** (2007 (1) KLT 71), this Court has held as follows :-

> "R.91A is a separate rule entitling a person for claiming leave, for taking Post Graduate Degree. A training course like B.Ed. is not a Post Graduate Degree Course and when the second proviso specifically refers to B.Ed. course and the leave availed was for completing the said course it must be understood as an independent provision and will entitle the person to claim the benefit of the said proviso, provided the leave is sanctioned for completing the B.Ed. course. As against the statutory rule, the Government cannot take away the benefit by virtue of any circular or executive order."

I quash Exts.P4 and P4(a). There will be a direction to the first respondent to consider the matter afresh and pass appropriate orders in the matter, in the light of the judgment referred to above, within a period of three months from the date of production of a copy of the judgment and the judgment referred to above.

The writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J

W.P.(C)No. of 2002

J U D G M E N T

Dated 21st February, 2007.